

## **REMARKS**

### **Claim Rejections**

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar (5,519,783).

### **Drawings**

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

### **Official Notice**

Applicant respectfully traverses the Examiner's characterization, without support therefor, of Applicant's recited bores corresponding to internally threaded seats, as being well known. It is always incumbent upon the Examiner to find a reference to support a rejection. According to "Formulating and Communicating Rejections Under 35 U.S.C. for Application," the Examiner has to factually support any prima facie case of obviousness. If the Examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of non-obviousness. Furthermore, Applicant notes that Applicant teaches bores and threaded seats located in specific relation to one another and specific locations in order to achieve advantages not offered by the prior art. For instance, these bores and threaded seats allow for the easy removal and replacement of the speaker mounting plates (and, thus, the speaker). For further discussion of the advantages of this configuration, please refer to p. 6, ll. 9-23 of Applicant's specification.

### **Claim Amendments**

By this Amendment, Applicant has cancelled claims 4 and 6 and amended claim 1 to include the limitations of cancelled claims 4 and 6. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art.

The amended claims are directed toward: an earmuff structure for headset or ear protector, comprising: two earmuff shells being provided at respective inner surface with forward projected and internally threaded seats; a circuit board mounted in each of said earmuff shells and having bores provided thereon to correspond to said internally threaded seats on inner surfaces of each said earmuff shell; and first and second speaker mounting plates separately assembled to said two earmuff shells, and having internally threaded bars formed thereon corresponding to said internally threaded seats on inner surfaces of said two earmuff shells, ***wherein said first speaker mounting plate is provided at a front surface with two battery compartments located at two outer sides of said central hole, wherein said two battery compartments formed on said first speaker mounting plate have battery conducting electrode plates pre-mounted therein; and said battery conducting electrode plates being electrically connected to said circuit boards by plugging terminals on conductors into corresponding sockets on said circuit boards.***

Other embodiments of the present invention include, *inter alia*, the above earmuff structure wherein: said speakers received in said central holes on said ***first and second speaker mounting plates are electrically connected to said circuit boards by plugging terminals on conductors into corresponding sockets on said circuit boards.***

Kumar teaches a headphone assembly wherein each earpiece 3 includes a shell 10 having an inverted U-shaped inner wall and an inverted U-shaped power board 30 which is sized to fit in the U-shaped chamber 25 of the shell 10. On p. 3 of the outstanding Office Action, the Examiner has argued that the disclosure of "inner cavity perimeter wall 22" and the "wall portions 27" teaches "two battery compartments (22, 27)" and, therefore, discloses Applicant's recital of two battery compartments formed on said first speaker mounting plate having battery conducting electrode plates pre-mounted therein. However, it is important to note that the reference does not teach that the "inner cavity perimeter wall 22" and the "wall portions 27" contain ***battery electrodes***. Rather, the reference clearly teaches that "[t]hree battery clips 31 are mounted on ***power board 30*** for releasably holding standard 1.5 volt batteries 32." Col. 4, ll. 44-48. In addition, despite the Examiner's

assertion on p. 3 of the outstanding Office Action that Fig. 5 teaches “plugging terminals”, the reference fails to teach anything about “plugging terminals,” in general, much less plugging terminals for the speakers AND for the batteries (with corresponding sockets).

Kumar does not teach or suggest: an earmuff structure for headset or ear protector, comprising: two earmuff shells being provided at respective inner surface with forward projected and internally threaded seats; a circuit board mounted in each of said earmuff shells and having bores provided thereon to correspond to said internally threaded seats on inner surfaces of each said earmuff shell; and first and second speaker mounting plates separately assembled to said two earmuff shells, and having internally threaded bars formed thereon corresponding to said internally threaded seats on inner surfaces of said two earmuff shells, wherein said first speaker mounting plate is provided at a front surface with two battery compartments located at two outer sides of said central hole, wherein said two battery compartments formed on said first speaker mounting plate have battery conducting electrode plates pre-mounted therein; and said battery conducting electrode plates being electrically connected to said circuit boards by plugging terminals on conductors into corresponding sockets on said circuit boards. Nor does the reference teach or suggest: the above earmuff structure wherein: said speakers received in said central holes on said first and second speaker mounting plates are electrically connected to said circuit boards by plugging terminals on conductors into corresponding sockets on said circuit boards.

It is axiomatic in U.S. patent law that, in order for the Examiner to reject claims as obvious under 35 U.S.C. § 103, the Examiner must first present a *prima facie* case of obviousness, including providing teaching from the art which clearly disclose each and every feature of the claimed structure, as well as a specific motivation or suggestion from the art. Applicant submits that it is abundantly clear, as discussed above, that the references, even when combined, do not disclose each and every feature of Applicant’s canceled claim 6 (now incorporated into claim 1) and, therefore, could not possibly render Applicant’s amended claims obvious under 35 U.S.C. § 103. Absent a specific showing of a *prima facie* case, the

combined references cannot be said to render any of Applicant's claims unpatentable under 35 U.S.C. § 103.

The Examiner is respectfully reminded that in In re Geiger, 815 F.2d 686, 688, 2 USPQ2d, 1276, 1278 (Fed.Cir. 1987) the court stated, at page 1278: "**Obvious to try**" is not a legitimate test of patentability. *Emphasis added.* Furthermore, in In re Gordan, USPQ 1125, 1127 (Fed. Cir. 1984) the court outlined that "[t]he mere fact that the prior art **could be so modified** would not have made the **modification** obvious unless the prior art **suggested the desirability of the modification**. *Emphasis added.*

It follows that the Examiner has failed to present a *prima facie* case with regard to claim 6 (now incorporated into claim 1) regarding battery electrode plates on the speaker mounting board. The Examiner has failed to present a *prima facie* case with regard Applicant's bores and threaded plates, as well as Applicant's recited plugging terminals and sockets (for both batteries and speakers). Accordingly, Applicant submits that the Examiner must either provide a *prima facie* case or withdraw the rejection.


### Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

Date: January 31, 2007

By:

  
Demian K. Jackson  
Reg. No. 57,551

TROXELL LAW OFFICE PLLC  
5205 Leesburg Pike, Suite 1404  
Falls Church, Virginia 22041  
Telephone: 703 575-2711  
Telefax: 703 575-2707

**CUSTOMER NUMBER: 40144**